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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 09/702,045   | 10/31/2000  | Louis J. Morsberger  | MFSI-001/01US           | 8530             |
| 22903  | 7590        | 11/01/2004           | EXAMINER                |                  |
| COOLEY GODWARD LLP<br>ATTN: PATENT GROUP<br>11951 FREEDOM DRIVE, SUITE 1700<br>ONE FREEDOM SQUARE- RESTON TOWN CENTER<br>RESTON, VA 20190-5061 |             |                      | ROBINSON BOYCE, AKIBA K |                  |
| ART UNIT   |             | PAPER NUMBER         |                         | 3623             |
| DATE MAILED: 11/01/2004  |             |                      |                         |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                        |                        |                      |
|------------------------|------------------------|----------------------|
| <b>Advisory Action</b> | <b>Application No.</b> | <b>Applicant(s)</b>  |
|                        | 09/702,045             | MORSBERGER, LOUIS J. |
|                        | <b>Examiner</b>        | <b>Art Unit</b>      |
|                        | Akiba K Robinson-Boyce | 3623                 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s). SUSANNA DIAZ

10.  Other: \_\_\_\_\_.   
  
*SUSANNA M. DIAZ*  
*PRIMARY EXAMINER*  
*4u.3623*

Continuation of 5. does NOT place the application in condition for allowance because: as per claim 1, the applicant argues that Pinsley does not disclose or suggest determining whether to invite a consumer to complete a survey related to a transaction "based at least partially on the comparison of the consumer information and the comparison of the merchant information". However, this is the claim as amended, and this amendment changes the scope of the claim. Before the amendment, the determination whether to invite the consumer to complete a survey related to the transaction was based on consumer information and merchant information received with a transaction. After the amendment, the determination is made based on the comparison of customer and merchant information with predetermined information. As per claim 10, the applicant argues that there is no discussion of making any determination using historical consumer information. However, Shkedy discloses developing historical consumer information for each of the participating consumers, in Col. 10, lines 1-7, where credit history for consumers is maintained in the buyer database. This information can be tracked according to a consumer tracking number. In addition, Pinsley discloses determining whether to collect survey information from the consumer in the transaction in Col. 4, lines 9-11, where an offer to participate in a survey is made at the conclusion of a transaction based on pre-determined criteria such as consumer offering criteria. This consumer offering criteria is embedded in instructions into an information document, as shown in col. 2, lines 3-10. Since this information is embedded in the document, this information is trackable, like the credit history consumer information of Pinsley. Therefore, the combination of Shkedy and Pinsley discloses "instructions to cause a processor to...determine [or determining], using the historical consumer information, whether to collect survey information from the consumer in the transaction". As per claim 16, the applicant argues that Shkedy does not disclose determining whether to solicit survey information from a consumer and that Pinsley does not disclose a processor configured to determine whether to solicit survey information based at least partially on the transaction record and the stored consumer information. However, the combination of Shkedy with Pinsley discloses this feature. Specifically, Pinsley et al, discloses that the consumer is offered the opportunity to complete a survey based on selection criteria. In Pinsley et al, the selection criteria is shown to be based on consumer information as shown in Col. 2, lines 30-37 where every Nth visitor is selected, where N is defined by offering criteria for a particular consumer. In this case, the offering criteria for a particular consumer represents consumer information. In addition, Pinsley discloses that the bias for selecting consumers is affected by the frequency of consumers visiting the site. In this case, the consumers visiting the advertiser's site represents the transaction. Finally, the applicant argues that there is lack of motivation to combine the Shkedy and Pinsley references. However, these references are combinable since they both disclose network-based systems for facilitating transactions between buyers or consumers and sellers or advertisers. .